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9  
10 UNITED STATES DISTRICT COURT

11 DISTRICT OF NEVADA

12 JASON ADLER, } Case No.: 2:14-cv-1705  
13 Plaintiff, }  
14 vs. }  
15 HILTON GRAND VACATIONS COMPANY, } **COMPLAINT**  
16 LLC, a Delaware limited liability company; }  
17 HILTON RESORTS CORPORATION, } JURY DEMAND  
18 a Delaware corporation, dba Hilton Grand }  
19 Vacations; HILTON GRAND VACATIONS }  
20 MANAGEMENT, LLC, a Nevada limited }  
21 liability company, dba Hilton Grand Vacations; }  
22 and HILTON GRAND VACATIONS CLUB, }  
23 LLC, a Delaware limited liability company, }  
24 dba Hilton Grand Vacations Club, }  
25 Defendants. }

26 Plaintiff JASON ADLER states as follows:

27 **Jurisdiction**

28 1. This is an action for damages arising under the Americans with Disabilities Act (“ADA”), as amended, 42 U.S.C. §§ 12101-12213, and the Family and Medical Leave Act (“FMLA”), 29 U.S.C. §§ 2611-2654.

29 2. This Court has primary jurisdiction over claims set forth herein pursuant to 28 U.S.C. § 1331 (federal question), 28 U.S.C. § 1343(a)(4) (civil rights action), 42 U.S.C. § 12117(a) (ADA), and 29 U.S.C. § 2617(a)(2) (FMLA). This Court also has supplemental jurisdiction over any and all pendent state law claims pursuant to 28 U.S.C. § 1337.

30 3. All material allegations contained in this complaint are believed to have occurred in

1 the State of Nevada, in the County of Clark; therefore, pursuant to 28 U.S.C. § 1331(b)(2), venue  
 2 properly lies in the southern division of the United States District Court for the District of Nevada.

3 **Exhaustion of Administrative Remedy**

4 4. On or about July 5, 2013, Mr. Adler completed and submitted an Intake Questionnaire  
 5 to the Equal Employment Opportunity Commission (“EEOC”), stating that his former employer  
 6 Hilton Grand Vacations had subjected him to unlawful discrimination on account of disability.

7 5. Thereafter, Mr. Adler filed a Charge of Discrimination with the EEOC, reiterating  
 8 that he was subjected to unlawful discrimination in employment due to disability. This Charge was  
 9 assigned Charge No. 846-2013-41156. A true and correct copy of this Charge of Discrimination is  
 10 attached as Exhibit 1.

11 6 By letter dated July 17, 2014, the EEOC issued its “Dismissal and Notice of Rights”  
 12 to Mr. Adler. A true and correct copy of this Notice is attached as Exhibit 2.

13 7. Mr. Adler subsequently received this Notice.

14 8. This action has been filed with this Court within 90 days of the date of the “Dismissal  
 15 and Notice of Rights” sent to Mr. Adler and within 90 days of Mr. Adler’s receipt of said notice.  
 16 Therefore, this action is timely filed pursuant to 42 U.S.C. § 2000e-5(f) and 42 U.S.C. § 12117(a).

17 9. Mr. Adler, therefore, has exhausted his administrative remedy on all claims pled  
 18 hereunder prior to filing this action with this Court.

19 **General Allegations**

20 10. Mr. Adler repeats the allegations contained in paragraphs 1 to 9, *supra*.

21 11. Mr. Adler is a citizen of the State of Nevada and a resident of Clark County, Nevada.

22 12. Defendant HILTON GRAND VACATIONS COMPANY, LLC, is a limited liability  
 23 company organized under the laws of the State of Delaware:

24 a. This Defendant conducts and transacts business within the State of Nevada,  
 25 County of Clark, under the name “Hilton Grand Vacations.”

26 b. For purposes of this allegation, the term “employer” is given the definition  
 27 set forth at 42 U.S.C. § 12111(5).

28 c. This defendant had over 15 employees at all times relevant to this matter.

1                   d.     This defendant had over 50 employees working within a 75-mile radius of  
2 2650 Las Vegas Boulevard South, Las Vegas, Nevada, at all times relevant to this matter.

3                 13.    Defendant HILTON RESORTS CORPORATION is a corporation organized under  
4 the laws of the State of Delaware:

5                   a.     This Defendant conducts and transacts business within the State of Nevada,  
6 County of Clark, under the name “Hilton Grand Vacations.”

7                   b.     For purposes of this allegation, the term “employer” is given the definition  
8 set forth at 42 U.S.C. § 12111(5).

9                   c.     This defendant had over 15 employees at all times relevant to this matter.

10                  d.     This defendant had over 50 employees working within a 75-mile radius of  
11 2650 Las Vegas Boulevard South, Las Vegas, Nevada, at all times relevant to this matter.

12                 14.    Defendant HILTON GRAND VACATIONS MANAGEMENT, LLC, is a limited  
13 liability company organized under the laws of the State of Nevada:

14                   a.     This Defendant conducts and transacts business within the State of Nevada,  
15 County of Clark, under the name “Hilton Grand Vacations.”

16                   b.     For purposes of this allegation, the term “employer” is given the definition  
17 set forth at 42 U.S.C. § 12111(5).

18                   c.     This defendant had over 15 employees at all times relevant to this matter.

19                  d.     This defendant had over 50 employees working within a 75-mile radius of  
20 2650 Las Vegas Boulevard South, Las Vegas, Nevada, at all times relevant to this matter.

21                 15.    Defendant HILTON GRAND VACATIONS CLUB, LLC, is a limited liability  
22 company organized under the laws of the State of Delaware:

23                   a.     This Defendant conducts and transacts business within the State of Nevada,  
24 County of Clark, under the name “Hilton Grand Vacations Club.”

25                   b.     For purposes of this allegation, the term “employer” is given the definition  
26 set forth at 42 U.S.C. § 12111(5).

27                   c.     This defendant had over 15 employees at all times relevant to this matter.

28                  d.     This defendant had over 50 employees working within a 75-mile radius of

1 2650 Las Vegas Boulevard South, Las Vegas, Nevada, at all times relevant to this matter.

2       16. The following particulars of the claims of unlawful discrimination and retaliation to  
3 which Mr. Adler was subjected during his employment with Hilton Grand Vacations are set forth  
4 in the Intake Questionnaire and Charge of Discrimination that he filed with the EEOC:

5           a. In or around February 2006, Mr. Adler commenced employment with Hilton  
6 Grand Vacations and/or Hilton Grand Vacations Club, at its business operations located at 2650 Las  
7 Vegas Boulevard South, Las Vegas, Nevada.

8           b. Mr. Adler's employment with Hilton Grand Vacations and/or Hilton Grand  
9 Vacations Club was involuntary terminated by his employer on or about May 25, 2013.

10          c. Mr. Adler originally was hired in the position of "Executive Consultant."

11          d. Mr. Adler subsequently was promoted to the position of "Senior Executive  
12 Consultant," the position that he held at the time of his termination.

13          e. Mr. Adler was employed in a "commission only" position. He was not paid  
14 an hourly wage or salary, only earned commissions. His employer did not require him to "punch a  
15 time clock" or otherwise retain records of actual hours on premises and actual hours worked.

16          f. Mr. Adler suffers from a chronic muscle disease that is a recognized disability  
17 under the ADA.

18          g. Mr. Adler's muscle disease substantially limits one or more major life  
19 activities, such as walking, standing, sleeping and an ability to concentrate.

20          h. Mr. Adler was denied a reasonable accommodation that would have allowed  
21 him to perform the essential functions of his position of Senior Executive Consultant. Mr. Adler had  
22 requested to be able to use leave time under the FMLA, including leave time allocated on an  
23 intermittent basis. His employer denied him the use of medical leave and intermittent leave,  
24 claiming that he had worked an insufficient number of hours during the preceding 12 months to be  
25 eligible for federally-protected leave under the FMLA.

26          i. The employer's stated reasons for denying Mr. Adler a reasonable  
27 accommodation and the requested medical leave was false. Mr. Adler had worked a sufficient  
28 number of hours; however, the employer's deficient time records were used as a pretext for denying

1 Mr. Adler the requested accommodation.

2 j. The employer's stated reason for terminating Mr. Adler's employment also  
 3 was false. Mr. Adler was accused of submitting a deficient medical note for extending a leave of  
 4 absence and was not given the opportunity to correct any perceived or actual deficiencies with the  
 5 medical note.

6 **First Claim for Relief**

7 *Unlawful employment discrimination due to disability in violation of the ADA*

8 17. Mr. Adler repeats the allegations contained in paragraphs 1 to 16, *supra*.

9 18. Mr. Adler's chronic muscle disease back constitutes a disability under the ADA as  
 10 it is a physical impairment that substantially limited one or more major life activities, including but  
 11 not limited to walking, standing, sleeping and an ability to concentrate.

12 19. Throughout the time period relevant to this matter, and at the time of Mr. Adler's  
 13 termination, Mr. Adler was a qualified individual who, with reasonable accommodation, including  
 14 but not limited to the use of legally-mandated intermittent leave under the FMLA, could perform the  
 15 essential functions of his position of Senior Executive Consultant.

16 20. By the actions set forth above, Defendants violated 42 U.S.C. § 12112(a) by  
 17 unlawfully discriminating against Mr. Adler by failing and refusing to provide a reasonable  
 18 accommodation to his disability when he was able to perform the essential functions of his position  
 19 either with or without reasonable accommodation.

20 21. Defendants further violated 42 U.S.C. § 12112(a) because Defendants unlawfully  
 21 terminated Mr. Adler's employment rather than providing the requested reasonable accommodation:

22 a. Mr. Adler was a qualified individual with a disability under the ADA.  
 23 b. He was qualified to perform the essential functions of his position and had  
 24 been successfully performing those essential functions.

25 c. He was involuntarily terminated from his employment.

26 22. Because Defendants unlawfully discriminated against Mr. Adler by terminating his  
 27 employer rather than providing a reasonable accommodation to his disability, Defendants must pay  
 28 Mr. Adler damages in an amount to be determined at trial for backpay, frontpay, lost benefits, and

1 compensatory damages for emotional pain, suffering, inconvenience, mental anguish and loss of  
2 enjoyment of life.

3           23. Because Defendants have been guilty of oppression, fraud or malice, express or  
4 implied, Defendants must pay Mr. Adler an additional amount for the sake of example and by way  
5 of punishment.

6           24. Mr. Adler has had to procure the services of an attorney to protect his rights and to  
7 secure compensation for damages incurred as a result of these violations of the ADA; therefore, he  
8 is entitled to recover reasonable attorneys' fees pursuant to 42 U.S.C. § 12205.

## **Second Claim for Relief**

## **10** *Unlawful employment discrimination due to disability in violation of NRS 613.330(1)*

11 25. Mr. Adler repeats the allegations contained in paragraphs 1 to 24, *supra*.

12           26. For the reasons set forth above and in the papers filed with the EEOC, Defendants  
13 violated NRS 613.330(1) unlawfully discriminating against Mr. Adler because he was a qualified  
14 individual with a disability.

15           27. Because Defendants unlawfully discriminated against Mr. Adler and subjected him  
16 to disparate treatment because he was a qualified individual with disability, Defendants must pay Mr.  
17 Adler damages in an amount to be determined at trial for backpay, frontpay, lost benefits, and  
18 compensatory damages for emotional pain, suffering, inconvenience, mental anguish and loss of  
19 enjoyment of life.

20           28. Because Defendants have been guilty of oppression, fraud or malice or  
21 implied, Defendants must pay Mr. Adler an additional amount for the sake of example and by way  
22 of punishment.

23           29. Because Mr. Adler has had to procure the services of an attorney to protect his rights  
24 and to secure compensation for damages incurred as result of these violations of NRS 613.330(1),  
25 he is entitled to recover as special damages an additional amount for attorney's fees incurred.

### **Third Claim for Relief**

27 Interference with rights under the Family and Medical Leave Act

28                   30. Mr. Adler repeats the allegations contained in paragraphs 1 to 29, *supra*.

1           31. The Family and Medical Leave Act (“FMLA”), 29 U.S.C. §§ 2611-2654, entitles  
 2 eligible employees of covered employers to at least 12 weeks of leave over a designated 12-month  
 3 time period for any of the reasons set forth in 42 U.S.C. § 2612(a)(1).

4           32. Employers must allow federally-protected leave under the FMLA to be taken on an  
 5 intermittent basis as needed.

6           33. Defendants interfered with Mr. Adler’s rights under the FMLA when Mr. Adler was  
 7 denied a medical leave of absence under the FMLA under the pretext of having insufficient hours.

8           34. Defendants further interfered with Mr. Adler’s rights under the FMLA by terminating  
 9 Mr. Adler’s employment rather than allowing him to take the necessary medical leave to which he  
 10 was entitled under the FMLA.

11          35. Because Defendants unlawfully interfered with Mr. Adler’s protected rights under  
 12 the FMLA, Mr. Adler has been damaged by an amount to be determined at trial.

13          36. Mr. Adler is further entitled to an award of punitive damages and liquidated damages  
 14 under 29 U.S.C. § 2617(a)(1)(A)(iii) because of this unlawful interference with his FMLA rights.

15          37. Mr. Adler has had to procure the services of an attorney to protect his rights and  
 16 secure compensation for the damages incurred as a result of these violations of the FMLA; therefore,  
 17 he is entitled to recover reasonable attorneys’ fees pursuant to 29 U.S.C. § 2617(a)(3).

18          WHEREFORE, Plaintiff JASON ADLER prays that the following judgment be entered upon  
 19 a trial by jury, against Defendant HILTON GRAND VACATIONS COMPANY, LLC, a Delaware  
 20 limited liability company, Defendant HILTON RESORTS CORPORATION, a Delaware  
 21 corporation, dba Hilton Grand Vacations, Defendant HILTON GRAND VACATIONS  
 22 MANAGEMENT, LLC, a Nevada limited liability company, dba Hilton Grand Vacations, and  
 23 Defendant HILTON GRAND VACATIONS CLUB, LLC, a Delaware limited liability company, dba  
 24 Hilton Grand Vacations Club:

- 25           1. Monetary damages in an amount to be determined at trial, which continue to accrue;
- 26           2. An award of interest on the amount owed;
- 27           3. Punitive damages and liquidated damages;
- 28           4. An award of attorneys’ fees and costs pursuant to 42 U.S.C. § 12205, 29 U.S.C.

1 || § 2617(a)(3), and/or any other applicable law; and

2 || 5. Any further relief that this Court deems just.

Respectfully submitted,

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